Supreme Court, U. S.
FILED
MAY 5 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-719

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 22, 1976
CERTIORARI GRANTED FEBRUARY 22, 1977

Supreme Court of the United States

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NATIONAL LABOR RELATIONS BOARD,
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INDEX

	Page
Relevant Docket Entries Board Case No. 25-CP-63-2	1
Charge	2
Complaint and Notice of Hearing	3
Answer	7
Stipulation waiving hearing	9
Excerpts from transcript of testimony in Dick v. Local Union No. 103, Iron Workers, #74-42-0 (W.D. Ky.)	11
Witnesses:	
William Oglesby	
Direct Examination	12
Cross Examination	22
Redirect Examination	25
Gerald J. Higdon	
Direct Examination	27
Cross Examination	33
Phillip C. Kelly	
Direct Examination	34

Page

Petitioner's Exhibits:

No. 2 39

No. 3 39

Respondent's Exhibits:

No. A 41

No. B-1 45

No. C-1 46

No. D 48

Order of the Supreme Court granting certiorari 69

(The decision of the Board and the decision and judgment of the Court of Appeals were printed in the petition for writ of certiorari and thus need not be reprinted.)

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

IN THE MATTER OF:

LOC. UNION NO. 103, INT'L ASSOC. OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFL-CIO

Case No.: 25-CP-63-2

3.6.74 Charge filed

4.24.74 Acting Regional Director's Petition for Injunction under Section 10 (1) of the National Labor Relations Act, as amended, in Civil No. 74-42-0

4.25.74 Complaint and Notice of Hearing

4.29.74 Petitioner's Answer

5.6.74 Hearing opened in Civil Action No. 74-42-0

5.6.74 Hearing closed in Civil Action No. 74-42-0

6.21-74 Stipulation entered into by all parties

8.23.74 Administrative Law Judge Lowell Goerlich's Decision issued

9.17.74 General Counsel's Exceptions, received

1.6.75 Decision and Order issued by the National Labor Relations Board

3.31.76 Decision of Court of Appeals

3.31.76 Judgment of Court of Appeals

6.25.76 Petition for Rehearing and rehearing en banc denied

2.22.77 Order of Supreme Court granting certiorari

NLRB-508
(12-61)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 25-CP-63-2

Date Filed March 6, 1974

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHOM CHARGE IS BROUGHT

a. Name: Bridge, Structural and Ornamental Iron Workers Local # 103

b. Union Representative to Contact: Charles Hill

c. Phone No.:

d. Address (Street, city, State and ZIP code)

5313 Old Boonville Hwy, Evansville, Indiana

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 7 (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above Labor Organization action in concert with others, has picketed Higdon Contracting Company, Inc. in excess of fourty (40) days without seeking an election through the NLRB. Further that such picketing is for recognitional purposes as evidenced by the unions conduct on the picket line and their picket sign language.

3. Name of Employer: Higdon Contracting Company, Inc.

4. Location of Plant Involved (Street, city, State and ZIP code): 616 Breckenridge St., Owensboro, Ky.

5. Type of Establishment (Factory, mine, wholesaler, etc.): Construction

6. Identify Principal Product or Service:

7. No. of Workers Employed: 13

8. Full Name of Party Filing Charge: Blankenship & Williams

9. Address of Party Filing Charge (Street, city, State and ZIP code): P. O. Box 27194, Indianapolis, Indiana 46227

10. Telephone No.: 317-784-7851

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] (Signature of representative or person making charge) Blankenship & Williams (Title or office, if any)

Address P. O. Box 27194, Indianapolis, Ind. 784-7851 (Telephone number) Mar. 5, 1974 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 862-496

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Case No. 25-CP-63-2

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

and

HIGDON CONTRACTING COMPANY, INC.

COMPLAINT AND NOTICE OF HEARING

It having been charged by Higdon Contracting Company, Inc., herein called Higdon, that Local Union No. 103, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein called the Respondent, has engaged in, and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director for Region Twenty-five, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations—Series 8, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The original charge was filed by Higdon on March 6, 1974 and served on the Respondent by registered mail on or about March 6, 1974.

2. (a) Higdon is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Kentucky.

(b) At all times material herein, Higdon has maintained its principal office and place of business at Owensboro, Kentucky, herein called the facility, and various

other facilities and jobsites in the States of Kentucky, and Indiana, and is, and has been at all times material herein, engaged at said facilities and jobsites as a general contractor in the construction industry.

(c) During the past year, a representative period, Higdon, in the course and conduct of its business operations, purchased, transferred, and delivered to its Kentucky facilities and jobsites, goods and materials valued in excess of $50,000.00 which were transported to said facilities and jobsites directly from States other than the State of Kentucky.

(d) During the past year, a representative period, Higdon, in the course and conduct of its business operations, performed services valued in excess of $50,000.00 in States other than Kentucky wherein Higdon is located.

(e) Higdon is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, the following-named person occupied the position set opposite his name, and has been and is now an agent of the Respondent, acting on its behalf, and is an agent within the meaning of Section 2(13) of the Act:

Charles Hill—Business Agent

5. (a) On or about January 29, 1974, the Respondent commenced picketing Higdon and caused said employer to be picketed at the W. R. Grace Company jobsite, Owensboro, Kentucky and at other jobsites in Kentucky and Indiana.

(b) The Respondent engaged in the activity described in paragraph 5(a), above, an object thereof being to force and require:

(i) Higdon to recognize and bargain with the Respondent as collective-bargaining representative of the employees of Higdon; and

(ii) The employees of Higdon to accept the Respondent as their collective-bargaining representative.

(c) The Respondent, at the time it engaged in the activity described in paragraphs 5(a) and (b) above, was not, and is not now, currently certified as the representative of the employees of Higdon.

(d) The Respondent engaged in the activity described in paragraphs 5(a), (b) and (c) above, without a valid petition under 9(c) of the Act involving employees of Higdon having been filed within a reasonable period of time from the commencement of such picketing.

6. The acts of the Respondent described in paragraph 5 above, occurring in connection with the operations of Higdon described in paragraph 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

7. The acts of the Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(C) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 29th day of May, 1974, at 10:00 a.m. (CDT), at the Division I Courtroom, Second Floor, Daviess County Courthouse, Owensboro, Kentucky, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten

(10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its answer, the Respondent shall serve a copy thereof on each of the other parties.

DATED AT Indianapolis, Indiana, this 25th day of April, 1974.

/s/ George M. Dick
GEORGE M. DICK
Acting Regional Director
National Labor Relations Board
Region Twenty-five
6th Floor, ISTA Building
150 West Market Street
Indianapolis, Indiana 46204

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Case No. 25-CP-63-2

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

and

HIGDON CONTRACTING COMPANY, INC.

ANSWER

Respondent Union, Local Union No. 103, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, by its attorneys, Berger and Berger, for its answer to the complaint herein, Case No.25-CP-63-2, states as follows:

1. It admits the allegations contained in rhetorical paragraphs 1 and 3 of the complaint.

2. It is without knowledge as to the allegations contained in rhetorical paragraphs 2(a), 2(b), 2(c), 2(d), and 2(e) of the complaint, and therefore denies same.

3. It denies the allegations contained in rhetorical paragraphs 4, 5(a), 5(b)(i), 5(b)(ii), 5(c), 5(d), 6 and 7 and each and every other allegation in said complaint not herein specifically admitted.

WHEREFORE, Respondent Union prays that the complaint herein, Case No. 25-CP-63-2 be dismissed and for all other proper relief.

Dated at Evansville, Indiana, this 29 day of April, 1974.

BERGER AND BERGER
18 Court Building
Evansville, Indiana 47708

By /s/ Charles L. Berger
Attorneys for Respondent
Union

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Case No. 25-CP-63-2

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

and

HIGDON CONTRACTING COMPANY, INC.

STIPULATION

The undersigned parties hereby agree as follows:

1. All parties hereby waive all rights to the holding of a hearing before an Administrative Law Judge.

2. The case shall be submitted to an Administrative Law Judge for decision and issuance of decision, and the following shall constitute the record in this case, copies of which are attached hereto and made a part hereof:

a. The complaint, marked Attachment A, which was timely served on all parties.

b. The answer, marked Attachment B, which was timely served on all parties.

c. The order postponing the hearing, marked Attachment C, which was timely served on all the parties.

d. The order indefinitely postponing the hearing, marked Attachment D, which was timely served on all parties.

e. The transcript (including the exhibits) of a hearing before District Judge Gordon on May 6, 1974,

concerning the above case, marked Attachment E.*

f. The petition for injunction in Civil No. C74-420, marked Attachment F.

3. The parties do not necessarily concede the relevance of all facts above recited, and any party urging irrelevance will do so in a brief to the Administrative Law Judge.

4. The privilege of filing a brief to the Administrative Law Judge is expressly reserved by all parties hereto, said briefs to be due by a date to be set by the Administrative Law Judge.

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO

By /s/ Sydney Berger — Dated 6-19-74

HIGDON CONTRACTING COMPANY, INC.

By /s/ Ray Blankenship — Dated 6-18-74

GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

By /s/ Arthur G. Lanker — Dated 6-21-74

* The parties hereto agree that references in the transcript to "VIII" should read "S."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

Civil Action No. 74-42-0

[Received June 24, 1974, Div. of Judges, NLRB, Wash, D.C.]

GEORGE M. DICK, Etc., for and on behalf of the National Labor Relations Board, PETITIONER

v.

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, RESPONDENT

TRANSCRIPT OF PROCEEDINGS

BEFORE HONORABLE JAMES F. GORDON, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY, AT OWENSBORO, KENTUCKY, ON MONDAY, MAY 6, 1974, WITHOUT A JURY.

APPEARANCES:

For Petitioner:

Arthur G. Lanker, Esq.
Indianapolis, Indiana

For Respondent:

Sydney L. Berger, Esq.
Evansville, Indiana

• • • •

[3] THE CAPTIONED MATTER WAS CALLED BY THE COURT CLERK AT ABOUT THE HOUR OF 9:40 A.M. ON MONDAY, MAY 6, 1974, AND THE FOLLOWING PROCEEDINGS OCCURRED:

• • • •

[4] MR. LANKER: Your Honor; may it please the Court; I will briefly set out the relevant facts which we will prove to support our position in the petition for injunctive relief.

• • • •

[6] While contracts with the minority unions are permissible under VIII(f) ofthe NLRB Act if entered into voluntarily, such contracts may with impugnity thereafter, be ignored by the employer and they do not bar a petition for an election under the Act.

• • • •

[15] MR. WILLIAM OGLESBY, CALLED AS A WITNESS, BY THE PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS, TO WIT:

DIRECT EXAMINATION

By Mr. Lanker:

Q Will you state your name and address?
A My name is William Oglesby. I live at 1925 Audubon Drive, Evansville, Indiana.
[16] Q And are you employed?
A Yes Sir; I am.
Q By whom?
A By Ironworkers Local 103.
Q And in what capacity?
A I am a financial secretary-treasurer and Business Agent of Iron Workers Local 103.
Q And have been since when?
A Since June of '72.

MR. LANKER: May it be stipulated that this gentleman was an agent of Local 103 Iron Workers; may it be so stipulated?
MR. BERGER: We do so stipulate.
MR. LANKER: I would request permission to interrogate by leading questions pursuant to Rule 43(b), Your Honor.
BY THE COURT: All right.
Q Now, you are familiar, are you not, with a W. R. Grace Chemical job site in Owensboro, Kentucky?
A Yes Sir; I am.
Q Loca! 103 Iron Workers picketed that job site in 1974; isn't that correct?
[17] A Yes Sir.
Q And it was picketing at that job site?
A Picketing—I'm sorry, Sir?
Q Who was it picketing?
A It was picketing the Higdon Construction Company in violation of the agreement with the Iron Workers Local 103.
Q You had been informed that Higdon Construction Company was performing the contract though, had you not?
A Uh, I was informed by a Mr. Kelly that Higdon Construction Company was doing the work; Higdon, uh, or,—No Sir; I wasn't informed of that particular thing: I was informed that another company was to do the work on the job.
Q Didn't Mr. Kelly tell you it was Higdon Contracting Company?
A No Sir; when I contacted Mr. Kelly he said it was going to be performed by a non-union contractor, a subcontractor.
Q Now, from the time that your Union commenced the picketing at the W. R. Grace Chemical site isn't it true that between that time and [18] the time that you ended your picketing more than thirty days elapsed? your picketing more than thirty days elapsed?
A Sir, uh, to the best of my knowledge and records, we began picketing January 7th and it ended sometime

February 15th, but no time was the picketing continuous due to the inclement weather; no one was performing work at the particular job, so we did not picket the job continouusly during that period of time.

Q Is it possible that you are a little bit mistaken on when the picketing started; whether it was in early January or late January?

A To the best of my knowledge, Sir, and my records at the Union Hall, January 7th, it commenced January 7th until around February 15th—ended around February 15th.

Q And during that time the signs that your Union used in this picketing was as follows:

> "Higdon Construction Company is in violation of the agreement of the Iron Workers Local Number 103."

Isn't that true; isn't that the sign you used?

[19] A Yes Sir; I believe that is the correct wording.

Q And you used that at all times?

A Yes.

Q And I believe that you testified that on some of the occasions that you didn't picket that was because there was inclement weather?

A No work was being performed.

Q And no work was being performed by Higdon, whether it be Higdon Construction or Higdon Contracting, no work was being performed by one of those two corporations; is that what you are saying?

A Yes Sir.

Q Now, is it true that your Union also picketed at the Barmet job in Rockport, Indiana on March 3rd—strike that, March 4th, 5th, 18th, 19th and 20th of 1974?

A Uh, Yes Sir; that, according to our records is true. I would like to add that that's really not in my jurisdiction. I am not exactly certain on that.

Q But you are certain that [20] that is what the Union's records reflect?

A Yes.

Q And you have examined them, have you not?

A Yes Sir.

Q And you have no reason to disbelieve that those are correct, do you?

A I'm sorry?

Q You have no reason to disbelieve the accuracy of your records?

A I believe they are—the dates are correct; yes Sir.

Q And the signs used during that period of picketing at the Barmet job were the same as the one that was used at the W.R. Grace Chemical job site?

A I can only say, Sir, that just one day that I know of, particularly, was the sign used as we used on the Grace Chemical Company job.

Q Your Union never had a majority of Iron Workers employees of Higdon Construction Company Incorporated, did it?

A What job are you referring to?

[21] Q At any time; your—anytime that your Union has been in existence and Mr.—the Higdon Construction Company Incorporated has been in existence, your Union has not had a majority of all Iron Worker employees working on any given date?

A Yes Sir; we have had.

Q All right; what date would that be?

A Let's say during the month of August, 1973 at the Glenmore Distillery job.

Q During the month of August?

A Yes Sir.

Q And I assume that you are referring to the week of August 16, 1973; is that correct?

A I can't recall the exact date, Sir.

Q Well, do you contend that it was for more than one week?

A Yes Sir; it was for more than one week.

Q All right; what other weeks?

A Uh, may I refer to my records; I have them in my pocket?

[22] Q Sure.

A Sir, on August 6, we had, uh, representative Iron Workers Local 103 working for the Higdon Construction Company.

Q On August 6th.

A And—uh,—

Q How many did you have employed?

A Maybe August 16th,—

Q (interrupt) How many did you have employed; how many members of Local 103 on August 6th did you have employed by Higdon, either Higdon Construction or Higdon Contracting or both?

A According to the Health and Welfare reports that I have here, Sir it's Bobby D. Bivins, Michael Hape, James Huchens, Joseph Lemham was, uh, James Miller and G.O. Rogers; that pay period ended 8-2-73, 8-9-73, 8-16-73, 8-23-73.

Q Well now, in an effort to assist you, Mr. Oglesby, don't the records that you are referring to reflect that the only persons for whom Health and Welfare was paid for the week ending August 2nd, of 1973 were Mr. Hape, for whom twenty-eight hours of Health and Welfare were paid; Joseph [23] Lemham, for whom thirty-two hours of Health and Welfare were paid, James T. Miller, for whom thirty-two hours of Health and Welfare paid and G.O. Rogers, for whom thirty-two hours of Health and Welfare were paid; isn't that the fact, Sir?

A Sir, are you looking at the same records I am? Somebody—I'm looking at the one dated August 1973, uh, Bobby D. Bivins, total nine hours, Michael Hape, 111 hours, Huchens, total of eight hours, Lemham, 128 hours, Miller, 152 hours and G.O. Rogers, 152 hours.

We have a total of 560 hours, for a total on the Welfare Fund—total payment was $224 and, uh, income was $280, my record here.

Q All right; are you familiar with the record that you now have in your hand and with its preparation, for example are you familiar with the recitation where it says concerning the payroll period ending and then it refers to columns?

A By—here—yes, right; 8-2-73, 8-9-73, 8-16-73, 8-23-73 and 8-30-73.

Q Okay.

A Now, there was the total hours for the month of August.

[24] Q Right; and during the week, for example of 8-2-73 this records shows, does it not, that there were no employees for whom Health and Welfare benefits were paid?

A For what week was that, Sir?

Q August 2nd.

A According to this it has August 2nd of '73, yes, for the pay period ending—now, this is a monthly record and the contractors put the week ending, pay period ending here, here and here and here (indicating), so forth.

So then, they put the total hours here (indicating) and sent it in on a monthly basis.

Q So, this document really is prepared by someone else and so you are not too familiar with it?

A This is prepared by the construction company.

Q But you don't know, for example, that when they say that column one refers to August 2nd, your testimony is that when there is nothing in column one, that that—what do you think that means when—

A (interrupt) Oh, I understand [25] what you mean by that column—the first column; yes Sir.

Q Yes, that that's for the week ending August 2nd of '73?

A Right.

Q And there are no employees for whom Health and Welfare were paid?

A For the—for that first column, evidently not; no Sir. It could have been—the pay period could have been different, you know, following up on another pay period; I'm not sure.

Q All right; for the week ending August 9th of 1973, uh, this record shows that there were four employees for whom Health and Welfare payments were made to Local 103; is that correct?

A Yes Sir.

Q And isn't it true that of those four, two were not members of Local 103 Iron Workers?

A Uh, that is correct, Sir, insofar as these other people was referred out from one of the—

Q They were referred out, but they were referred out on a permit.

[26] A Yes.

Q And, as such, they were not members of Local 103; is that correct?

A Yes Sir.

Q All right. Now, in the following week there are a total of six persons, uh, are there not for whom Health and Welfare payments were made, the week ending August 16, 1973?

A Four again, Sir, right; 8-16, column three, right here, one, two, three, four, five, six,—correct.

Q All right; there were six, of whom two were not members of Local 103; is that correct?

A Yes Sir; it is Lemham and Rogers.

Q And isn't it true that Mr. Bivins and Mr. Huchens did not work on the same day or even the same week of the week ending August 16, 1973?

A The only thing I can quote you, Sir, is what the column says here. All we do is just dispatch the men out and what exact days they worked are not here is up to the contractor and if they [27] don't happen to work certain days, they notify you, but I don't know exactly what days worked or did not work.

Q Okay, now, directing your attention then to the week ending August 23rd, again there were four employees for whom Health and Welfare payments were made; is that correct?

A Yes Sir.

Q Of whom two were and of whom two were not members of your Union; is that correct?

A Yes Sir.

Q And again on the week ending August 30th, the same four employees were employed and the Health and Welfare payments made for that?

A Yes Sir.

Q And, well now, other than this time, do you contend that there was any other time that your Union was

representing a majority of either Higdon Construction Company's employees or Higdon's Contracting Company's employees?

A The only thing, Sir, I can testify to is what has happened since I have been a business agent of Local 103. Prior to that date I [28] can not suggest anything.

We have been—we have had a contract since 1965. I am certainly not aware of whom he hired or who he did not hire; I'm not aware of it at all.

Q So, the answer is you don't know?

A Prior to my election; no Sir.

Q Now, at the time in August of 1973 when you referred certain men to—these were all referred to the Glenmore site or the W.R. Grace—strike that; the Glenmore site; is that correct?

A Yes Sir.

Q And at that same time in August of 1973 you knew, did you not, that Higdon Construction Company employed other Iron Working employees other than those we have talked about; you knew that, didn't you?

A Yes Sir; I did.

Q You knew that they were not members of your Union?

A I know he used people performing Iron Worker's work, right.

Q And they were not members of [29] your Union?

A And he asked would it be all right to use these people during this term and I said we would be glad to work with them.

Q And he did use these other non-Union people, did he not?

A Uh, yes Sir; he did.

Q And, for example, you don't claim that Carl Millander is a member of your Union, do you?

A I don't know him Sir.

Q Or Ronald Hubbard?

A No Sir; I don't know him.

Q Or Jerry Higdon?

A I know Jerry.

Q But he's not a member of your Union?
A He is a former member of Local 103; yes Sir.
Q Well, when did his membership end?
A Oh, sometime in '72.
Q John Phillips was not a member of your Union, was he?
[30] A No Sir. Where was he working?
Q Pardon?
A Where was he working?
Q At the Owensboro Recreation Center.
A No.
Q He was not a member was he?
A (witness shook head negatively.)
Q Raymond Nix was not a member?
A No Sir.
Q And you knew that during August employees that I have named to you were employed by Higdon Construction Company in Iron Working duties?
A These people that you just named to me?
Q Yes.
A No Sir; I don't know them from Adam. I knew that he had people employed by 'em, but not those particular people or those particular names.
Q Other than those persons, Miller, Hape, Bivins, Huchens, were there any others [31] that you contend worked at anytime in 1973 for Higdon Construction Company or for Higdon Contracting Company who were members of your Union?
A There was Higdon Construction Company; there were two other members, uh, I believe it was Clayton Smith and William Adlach.
Q What is the last name?
A Adlach, but I'm not sure about Mr. Adlach; I will have to check his records.
Q But other than those, we covered all those that you know of that worked for Higdon Construction or Higdon Contracting who were members of your Union?
A At Glenmore Distillery; yes Sir.
Q At any job, I am asking about; at any job anywhere in 1973?

A That's the only members that we had working for 'em, as far as to my knowledge; yes Sir.
Q Local 103 Iron Workers has not filed any petition with the National Labor Relation Board seeking an election of the employees of either Higdon Contracting Company Incorporated or Higdon [32] Construction Company Incorporated, has it?
A No Sir; we have a contract with Higdon Construction Company.
MR. LANKER: I am going to move to strike that as not responsive, commencing with the word "no".
BY THE COURT: Well, I am going to overrule that. I understand the theory of his defense.
Q And these companies, Higdon Contracting Company Incorporated, nor Higdon Construction Company Incorporated, neither one of them, to your knowledge, has filed a petition for an election, have they?
A Not to my knowledge, Sir.
Q Now, your Union, Local 103 Iron Workers, did file charges alleging that Higdon Construction Company, Incorporated, Higdon Contractors, Gerald Higdon owner and Gerald Higdon, doing business as Higdon Contractors, violated Section VIII(a), (1) (3) and (5) of the Act; isn't that correct?
A I believe that is true.
Q And those charges were dismissed by the National Labor Relations Board on [33] August 25, 1974; isn't that correct? (sic)
MR. BERGER: We so stipulate. He wouldn't know the date because I got it; we so stipulate.
MR. LANKER: Thank you. I have nothing further on direct, Your Honor.
MR. BERGER: I have a few questions.
BY THE COURT: All right.

CROSS EXAMINATION

By Mr. Berger:

Q Since you were asked about charges, Mr. Oglesby, would you please—please mark this as Respondent's exhibit A and A-1.

(Whereupon two documents were marked for identification as Respondent's Exhibit A and Respondent's Exhibit A-1.)

MR. LANKER: May I interrupt; Your Honor, I understood that I misspoke on the stipulation; it should have been April—it was missed in April.

BY THE COURT: I think you [34] said August.

MR. BERGER: I didn't—I took your word on the date.

MR. LANKER: I meant to say August—there, I did it again; I meant to say April of 1974.

MR. BERGER: Thank you; we so stipulated, as amended. I didn't have the date.

Q Mr. Oglesby, I show you what has been marked as Respondent's Exhibit A and ask you if that is a copy of a letter and that, uh, which you received from the NLRB with reference to charges filed against Local 103; that's—when I say you, I mean the Local Union.

A Yes Sir; we received those.

Q Sir?

A Yes Sir; the Local received them.

MR. BERGER: I offer in evidence Respondent's Exhibit A. That's the one dismissing the "C" charge.

MR. LANKER: We have no objection to the receipt, Your Honor.

BY THE COURT: Let it be [35] filed.

(Whereupon Respondent's Exhibit A was received in evidence.)

MR. BERGER: If I may, just briefly explain to the Court the relevance of this; the charge itself is identical with the charge which is now before the Court as a part of the Petition for Injunctive Relief.

The only difference is this is numbered differently and I direct the Court to the page three of the exhibit, which is a summary report by the Regional Director, Mr. Dick, who is Mr. Lanker's superior, stating why this charge was dismissed.

I call the Court's attention that this charge was filed by Higdon Contracting Company Incorporated and that the third sentence states:

> "This file reflects that the only purpose of the picketing was to require the employer to honor its contract with Bridge, Structural and Ornamental Iron Workers [36] Local 103."

• • • •

Q Mr. Oglesby, I could not quite hear all of your testimony. You were facing Mr. Lanker. Was I—am I correct that when you testified that—when you went over that sheet, that on August 16th there were six employees of Higdon Contracting or Higdon Construction Company and four were Union members and two were non-Union members on the job in question?

A Yes Sir; that is correct.

Q So, that time, then, the Union had a majority of employees?

A Yes Sir.

• • • •

[37] Q Uh, I will ask you for how long you have been signing contracts with Mr. Higdon, whatever the corporation name he may have used, [38] approximately.

A As far as I can go back to; as far as the Local 103's record, Sir, is 1965.

MR. BERGER: I would ask the reporter now to mark these as B and B-1 and C and C-1 for identification.

(Whereupon four documents were marked for identification as Respondent's Exhibit C and C-1 and Respondent's D and D-1.)

Q Sir, I show you what has been marked as Respondent's exhibit D and ask you to tell the Court what that is.

A It's an agreement, Sir, by and between the Tri-State Iron Workers Employees Association of Bridge, Structural and Ornamental Iron Workers Local number 103.

Q Now, I will ask you whether it is the custom of the Union that when it signs contracts with other contractors who are not a party to that original agreement that the Union has the contractor sign a white piece of paper called "Acceptance of Agreement" and a pink piece of paper [39] obligating the employer to comply with all of the provisions of that contract?

A Yes Sir; that is true and correct.

Q I will ask you whether that was done with Mr. Higdon and Higdon Construction Company Incorporated?

A Yes Sir; it was.

Q I now show you what has been marked for identification as Respondent's Exhibits B and C and ask you to tell the Court what those are?

A This is an acceptance of agreement signed by Higdon, Gerald Higdon, Higdon Construction Corporation Incorporated, witnessed by Bill Mosley.

Q Now, acceptance agreement; is that acceptance agreement which has been marked as Respondent's exhibit D?

A Yes Sir; it is.

Q And what is number "C"?

A This is an agreement where, in effect, they are responsible for paying Health, Welfare and Pension Trust Funds.

Q I see; that's for the [40] protection of the workers?

A Yes Sir; it is.

MR. BERGER: I now offer in evidence the Respondent's exhibit B, C, and D.

MR. LANKER: No objection.

(Whereupon Respondent's B, C, and D were received in evidence.)

MR. BERGER: I now ask Lee [sic] for the Record to substitute "B-1" for "B" and "C-1" for "C" and I

represent that they are photostat copies and you may compare them.

MR. LANKER: No objection.

BY THE COURT: So ordered.

• • • •

[41] REDIRECT EXAMINATION

By Mr. Lanker:

Q Now, I a little bit confused by your testimony that your Union represented a majority. I thought you told me on direct examination that you knew that Higdon had jobs besides the Glenmore job at the same time of the Glenmore job. I thought you told me that; didn't you?

A Yes Sir; I did.

Q And that he used Iron Workers on these other jobs; did you tell me that?

A I said he used people to perform Iron Workers work that was not members of ours.

Q Yeah. So, what—are you saying that at one time he had a majority—that your Union had a majority on the Glenmore job site; is that what you are saying?

A That's right.

Q But you recognize that if—that the Company, Higdon Construction Company at the same time had other Iron Worker employees who were not members of your Union?

A He had people, yes Sir; on his [42] payroll that he was having perform Iron Workers work and he was not living up to an agreement with Iron Workers Local 103, paying them substandard wages; yes Sir.

Q And this—these other employees that he employed at the same time were enough to reduce your majority status to below a majority status, isn't that correct?

A Could I explain something to you, Sir. When we have an agreement with a company they—when they have work to be performed they call the Local and ask for men and at the same time, as was stipulated awhile ago, uh, they may have a person that they want to use and we agree to that if they are qualified people.

Q Well, when you signed the contract that your counsel put in evidence, that contract covered all of Higdon's Iron Worker employees; isn't that correct, Sir?

A Supposedly, yes Sir; he—he was supposed to hire men out of the hiring hall.

Q For all of his projects?

A Yes.

Q Not just the Glenmore?

[43] A For all his Union work.

Q All of his projects?

A Work; that's right.

Q But he didn't do it?

A No Sir.

Q So that your Union did not have a majority at anytime of Higdon's Iron Workers employees; isn't that the simple fact?

MR. BERGER: If he knows.

A Well, uh, Sir? I'm sorry, Sir?

BY THE COURT: Answer it if you can.

Q Will you answer the question?

A Will you say the question again?

Q Your Union at no time had a majority of the Iron Workers employees of Higdon Construction Company?

A Well, only at the Glenmore job only, as far as I know; the other jobs I don't know how many men they had on the job.

Q But you already told us in [44] direct examination about who was or was not a member; you remember that testimony?

A Yes.

Q So that in light of that, are you now willing to concede that it is true that your Union did not at any time have a majority of the Iron Workers employees of Higdon Construction Company?

A Sir, on the Glenmore job I believe we had a representative majority of the men because they were referrd to, uh, out of our Local Union Hall, Iron Workers members with an Iron Workers permit.

Q But the permit men, we've already testified—you testified were not members?

A That's right, Sir.

Q And you testified that there were coincident—that simultaneously at the time at the Glenmore job was staffed in part by your men and in part of permit men who were members, at the same time, the same company had other Iron Workers Employees who were not members; you have conceded that haven't you?

A As far as my knowledge they had two other jobs going; yes Sir.

[45] Q And on those two other jobs at the same time there were Iron Workers employed.

A They were performing work of the Iron Workers.

Q Yeah.

A They weren't members of the Local 103.

MR. LANKER: That's what I said, okay.

THE WITNESS: Right.

• • • •

[46] MR. GERALD J. HIGDON

called as a witness, by the Plaintiff, having been first duly sworn, was examined and testified as follows, to wit:

DIRECT EXAMINATION

By Mr. Lanker:

Q Will you state your name and address, please?

A My name is Gerald J. Higdon. I live at Route 4, Stanley, Kentucky.

• • • •

Q Uh, you are president of Higdon Contracting Company Incorporated; is that right?

A That is correct.

Q And, uh, where is that corporation incorporated?

• • • •

[47] A Oh, in the state of Kentucky.

Q And when was it formed?

A It was, uh, formed in, uh, July, 1973.

Q You are also president of Higdon Construction Company Incorporated?

A Yes Sir. I am.

Q Now, in what business is Higdon Contracting Company Incorporated engaged?

A We are engaged in, uh, building construction, primarily steel, prefabricated buildings.

• • • •

[48] Q Now, I want to direct your attention to 1973; more particularly to the month of July and to ask you whether or not during that month your company, Higdon Construction Company Incorporated, had a contract to, uh, to do some work at the Glenmore Distillery?

A We did have a contract there, yes.

Q And, uh, at any time—strike the question. There is a contract entered into evidence here, an acceptance of agreement, uh, Respondent's B-1, C-1. I'll ask you to look at those. You recognize those, do you not, as documents that you signed?

A Yes, I do.

Q In July of 1971?

A Yes, I do.

Q Now, would you—

MR. BERGER: (interrupt) Excuse me; did you say July of '71?

MR. LANKER: '73.

[49] MR. BERGER: Yes Sir.

Q And would you tell the Court whether you had any conversation or conversations with any official or officials of Local 103 Iron Workers at any time in the month of July before you entered into those contracts?

A Yes, I had quite a conversation, uh, with Mr. Oglesby; matter of fact, I signed that thing reluctantly, against my will.

Q Well, what were the circumstances? What conversations did you have with him, with Mr. Oglesby?

A Well, I can't repeat some of the things I said, probably, but uh, I took the contract with the agreement with the Glenmore Distillery that I would operate the job with Union people.

They insisted on this because they didn't want any trouble in their factory among their factory people and my contract with the Union, I had just finished up a three year contract some six months before.

It—it was run out. I intended to use Union people on this job by calling for 'em out of the [50] various Unions and when I got ready for people to work I asked for 'em and they wouldn't give me any.

Mr. Oglesby, as a matter of fact, said that, uh, he would not furnish me any men unless I signed the contract.

So, uh, we proceeded to do the job, uh, without it, even though it was a little rough. We were going to try to do it. As a matter of fact, I had to sub-out some of the work to another contractor who was operating with Union people and we proceeded to go and then the Carpenters entered into the thing; the Operating Engineers entered into it.

They came up and shut my job down and there was talk about a walk out of the Distillery. So, their manager came to me and told me that something would have to be done. Well, when the final shut down came, uh, well, I—I just lost my cool and I went and signed their contracts.

Q Okay. Now, after you signed contracts with these Unions including Iron Workers Local 103, I take it that for some of your projects, Local 103 did furnish men, is that correct?

A On the Glenmore Distillery job only.

[51] Q At any time in July, 1973, either before or after the execution of this acceptance agreement, or at any time in 1973 or 1974, were there or were there not a majority of your Iron Workers employees who were members of Local 103 Iron Workers?

A No, no; definitely not.

Q Did you, at my request, prepare a compilation from your—strike the question. Did you at my request cause to be prepared a compilation showing the employees employed by your company as Iron Work employees during the period July 26, 1973, through March 28, 1974?

A I did.

MR. LANKER: Would you mark this as Petitioner's exhibit one?

(Whereupon a document was marked for identification as Petitioner's Exhibit number one.)

Q I am showing you what has been marked as petitioner's exhibit one consisting of several sheets and ask you to look at it long enough to tell the Court whether this is or is not the compilation that you testified about?

[52] A This is the compilation; the, uh, weeks in here —uh, weeks endings in here from 8-9-73, 8-16-73, 8-23-73, 8-30-73, 9-6-73; during that period I had, uh, some people that had been sent to me from Local 103, but, uh, I think that they must have about three actual members and I—we were employing at that time on Iron Work anywhere from ten to eleven people.

Q So, this compilation, this Petitioner's number one, shows not just the Glenmore Iron Workers, but the Iron Workers employed by you on all of your projects during the times shown.

A That's right.

MR. LANKER: I would offer this into evidence.

BY THE COURT: Let it be filed.

(Whereupon Petitioner's Exhibit number one was received in evidence.)

• • • •

[53] Q Now, Mr. Higdon, I want to direct your attention to the month of February, 1974, and ask you whether or not you had any conversation with William Oglesby of Local 103 Iron Workers?

A Yes, I—I had a conversation with Mr. Oglesby at that time.

Q Where did this conversation take place?

A In my office.

Q Were there others present at the time?

A My secretary was in the outer office; the door was open.

[54] Q All right; will you tell the Court what was said, please?

A Uh, I would like to correct that statement. There was another party present; there was—Mr. Bill Mosley was there with him.

Q And who is Mr. Mosley?

A Mr. Mosley is a business agent for the Carpenters.

Q All right; will you proceed and tell the Court what was said on this occasion?

A Well, they came in and asked me what I was—what I was doing.

MR. BERGER: Excuse me; we object, Your Honor. Because of the fact that he says, "They came in."

Mr. Mosley is with a different Union and since only 103 is involved here, we would ask that he state what Mr. Ogiesby said and what Mr. Mosely said separately. Obviously, they didn't both talk simultaneously.

BY THE COURT: All right; you will identify who you are quoting each time.

THE WITNESS: All right. Your Honor, uh, Mr. —uh, I'm not real sure which [55] one asked me what was going on, uh, but I proceeded to explain to 'em the reason the job was being handled at the W. R. Grace as it was under the new company's name, uh, was, due to the fact that, uh, they had, uh, forced me into signing this agreement at the Glenmore Distillery that I had to do something because, uh, I have a lot of competition that is not non-Union and I have to compete with 'em and they—uh, I feel like that they forced me into this position to go to the second company; otherwise, I'd be competing with Union people and, uh, I am just not big enough to compete with most of the Union people in this area.

When it comes to larger jobs, I am not there. I have to compete with the smaller contractors. So, I formed the second company and they couldn't understand why and I proceeded to tell 'em because of the Glenmore situation.

Q The Glenmore Distillery, you mean?

A The Glenmore Distillery, yes, yes. Then—uh, they said, "Well, all right; let's get signed up here. Let's sign up this new company."

I made the statement that this would be kind of silly for me to do this because it would [56] defeat the purpose I had started out to do and, uh, they—uh, Mr. Oglesby said, uh, "You mean you're not going to sign?"

I said, "No, I'm not going to sign."

He said, "Well, that's all for me", and he got up and he walked out and Mr. Mosley went with him.

Q Now, was Higdon Contracting Company engaged in any construction at the time of this conversation?

A We had—uh, Higdon Contracting Company had started, uh, the warehouse job at W. R. Grace Company, yes.

Q Here in Owensboro?

A Yes, in Owensboro, Kentucky.

Q Now, did Higdon Contracting Company Incorporated have any contract to perform construction at Barmet in Rockport, Indiana?

A Uh, we—uh,—we do have at this time a contract through Higdon Contracting Company with Barmet Industries in Rockport, Indiana vicinity, yes.

Q And, uh, did you see—did you ever have occasion to be at that construction site [57] there in Barmet?

A Yes, I was there daily.

Q Did you see any picketing there by Local 103 Iron Workers?

A Yes, Local—the Local Iron Workers were picketing there, uh, part of the time.

MR. LANKER: Would you mark this as Petitioner's exhibit number two?

(Whereupon a photograph was marked for identification as Petitioner's Exhibit number two.)

Q Directing your attention to the sign on Petitioner's exhibit number two and to the language on the sign, I ask you to state whether or not this is the wording that was on the sign that was used by Local 103 in picketing at the Barmet project?

A The same wording, yes.

MR. BERGER: No objection.

MR. LANKER: Offer it, Your Honor.

[58] BY THE COURT: Let it be filed.

(Whereupon Petitioner's Exhibit Number Two was received in evidence.)

MR. LANKER: I have nothing further on direct, Your Honor.

CROSS EXAMINATION

By Mr. Berger:

Q Mr. Higdon, as I understand it, you, uh, well, am I correct that after you signed this contract with Local 103 that we have mentioned, that you have identified, you found it was difficult to comply with it and so you decided to form this new company, this Higdon Contracting Company Incorporated in order to get around the contract; is that right, Sir?

A In order to, uh, get around the contract, as you put it, uh, to be able to bid with my competition, yes.

Q Yes, and this new company, Higdon Contracting Company, that was really you. I mean you are—you are the sole stock holder?

A Right.

[59] Q And you are the president of both companies, Sir?

A That's right.

* * * *

[60] Q And you are using the equipment that is owned by you under the name of Higdon Construction Company Incorporated?

A We are; and we are leasing from one company to the other.

Q I see; which company is leasing the which?

A Well, Higdon Construction Company is the only one that has any par value at all and, uh, therefore it would own the equipment, once it is paid for and, uh, we lease it to the Higdon Contracting Company.

Q So, the equipment that the Higdon Contracting Company is using is owned by the Higdon Construction Company?

A That's right.

Q Yeah, and, uh, who prepared [61] —they both have the same directors, don't they, same Board of Directors, same officers, both companies?

A Uh, yes, I am the president of both of 'em and my son is secretary and treasurer.

Q And you own all of the stock in both companies?
A Right.

• • • •

[72] MR. PHILLIP C. KELLY,

called as a witness, by the plaintiff, having been first duly sworn, was examined and testified as follows, to wit:

DIRECT EXAMINATION

By Mr. Lanker:

Q Would you state your name and address, please?
A Phillip C. Kelly, and I live at Route 3, Philpot, Kentucky.
[73] MR. BERGER: I'm sorry; I didn't get the address.
THE WITNESS: Route 3, Philpot, Kentucky.
Q Are you employed by Higdon Contracting Company Incorporated?
A Yes Sir; I am.
Q How long have you been employed by them?
A Since last July.
Q And in what capacity?
A I am the general manager of Higdon Contracting Company.
Q How long in that capacity?
A Uh, since last July I have held the title of general manager of the company and it was activated in December of '73.
Q Now, pursuant to a contract with the W. R. Grace Company in either January of 1974 or early December, 1973, did Higdon Contracting Company Incorporated commence construction on the W. R. Grace project in Owensboro, Kentucky?
A Yes Sir; we did.
Q And after you commenced that [74] did you have any contact from any official of Iron Workers Local 103?
A Yes Sir; I did.
Q From whom?
A Uh, from Mr. Oglesby.

Q And when was this, please?
A This was in, uh, January, and I don't remember the exact date, but it was around the first of January.
Q Of 1974?
A '74; yes Sir.
Q And how was that contact made?
A Mr. Oglesby called me from the guard house up at the W. R. Grace Company, uh, requesting permission to go back to the job site.
Q And what did you say to him, if anything?
A At this time I was tied up. I could not get up there and I told him, uh, such, and he said okay.
Q Did he ever get back to you on the same matter?
A Yes, he did. Mr. Oglesby and Mr. Mosley called again from the guard house. I'm not [75] which one I talked to, uh, the second time.
Q What happened this time?
A This time, again they wanted to go back in there and, again, I could not get up there. It's up, uh, about three miles up there and by the time you run up there and run back, uh, I have wasted quite a bit of time and, uh, it's—these people request us to, uh, escort anyone who goes back to the job site other than our employees as we will be responsible for any actions they take and when I talked to, uh, they were together—they were operating together, Mr. Oglesby and Mr. Mosley.

I'm not sure which one I talked to on the phone, but I believe it's Mr. Oglesby and I got a cussing that time and it kept on and on and he finally told me just to get myself a lawyer.
Q Did he say why you should get a lawyer?
A Yes Sir; he, uh, claimed that Higdon Construction Company was doing the job up there and I informed him that they were not, that Higdon Construction Company did not have a contract with W. R. Grace Company and he said we were in violation of contract and that we should get a lawyer because we [76] would have to go to court with 'em.
Q Now, state whether or not you ever saw a picket by Local 103 Iron Workers at the W. R. Grace job.
A Yes Sir; I did.

Q When did you first see it?
A It was on or about the twenty-ninth of January.
Q Of what year, please?
A 1974.
Q And did you see it there after that first day?
A Yes Sir; it was there, uh, quite consecutively. I don't know exactly how many days; it ran on up into March 1st was the last day the picket sign was there.
Q Showing you Petitioner's exhibit number two, I ask you to state whether that is or is not the ledgend; whether this correctly depicts the ledgend on the picket sign that you saw during that period of the W. R. Grace project?
A Yes Sir; it does. In fact, I took this picture myself.
Q And were there any days during [77] period, January 29th through March 1, 1974, when there was no picketing?
A Yes Sir; there was.
Q About how many times, please?
A Uh, I would say just purely by memory, four to five days at the most that they weren't there; it was days that it rained or something happened.
Q Now, state whether or not Higdon Contracting Company Incorporated was at any time in 1974 engaged at a project at Barmet in Rockport, Indiana?
A Yes Sir; we started the Barmet project in Rockport approximately the twentieth of February of this year.
Q And state whether or not you have ever had any conversation with any official of Local 103 Iron Workers with regard to that job.
A Yes Sir; Mr. Charles Hill came over, it was one of the first couple of days we were there. I'm not sure of the exact date; around the twentieth or twenty-first, somewhere in there, and asked me at that time if we were going to use Union people on the job and I informed him that Higdon [78] Contracting Company was doing the job; we did not have a contract with 'em and that we were not going to do the job Union.

Q Did he make any response to that?
A Yes Sir; he did. He said, "I'll get right on it", and he got into his car and left.
Q Did you or did you not thereafter see any picket signs by the Union at the Barmet job?
A Yes Sir; there were pickets by several Unions and the Iron Workers Local 103 was one of those.
Q And when did you see such a picket by Local 103?
A Uh, on March 5th was one day.
Q 1974?
A Yes Sir.
MR. LANKER: Would you mark this as Petitioner's exhibit three?

(Whereupon a photograph was marked for identification as Petitioner's Exhibit [78b] Number Three.)

MR. LANKER: We offer Petitioner's exhibit number three; I have nothing further on direct, Your Honor.
BY THE COURT: All right.
MR. BERGER: No objection.

(Whereupon Petitioner's Exhibit Number Three was received in evidence.)

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[97] BY THE COURT: Well, let me say this, Gentlemen; I realize, of course, that in these matters of labor injunction the Court is not held to the cold, high standard of granting of regular equitable relief; that is, such standards as irreparable harm, and such standards as reasonable probability of eventual success, and I am not under any burden in a case of this type to go to the merits and decide whether or not certain things do, in fact, exist.

I just look at the thing as a whole, and decide whether I think injunction relief is just or proper.

Now, I think from a cold, technical, legal situation, uh, particularly when I take into [98] account the fact he could have sought the certification uh, this is an VIII(b)(7)(c) case, but I am right disturbed, very frankly, by the fact that the Government wants to use the injunctive power of this Court when there is no strike; no

picketing; and, uh, when there was a little picketing out there with a sign or two there was no violence and no call on me to come down with a heavy hand of the United States when I am confronted with a test as to whether or not something is just and proper.

In view of this corporate gymnastics that has been pulled here, uh, this Court is just not that loose with its equitable power. The matter is going to be heard on the twenty-ninth of May.

It will be a matter of those possessed with the expertese in labor matters to make a quick determination of this situation.

If there is picketing between now and the twenty-ninth I will hear the Government, but I am not prone to issue any order that brings down the power of the United States with a matter in the situation it is in today.

I deny the injunction.

• • • •

PETITIONER'S EXHIBIT #2

PETITIONER'S EXHIBIT #3

RESPONDENT'S EXHIBIT A

REGION 25
ISTA Center, 150 West Market Street
Indianapolis, Indiana 46204

Telephone (317) 633-8921

Mr. Ray Blankenship
Blankenship & Williams
P. O. Box 27194
Indianapolis, Indiana 46227

Re: BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS LOCAL #103
Case No. 25-CC-299

Mr. Blankenship:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted inasmuch as there is insufficient evidence of violation (see attached summary report). I am, therefore, refusing to issue a complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C., by the close of business on _____. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, and a copy of any such request should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

/s/ George M. Dick
GEORGE M. DICK
Acting Regional Director

Enclosures—Notice of Appeal
REGISTERED MAIL
RETURN RECEIPT REQUESTED
Attachment

cc: General Counsel, c/o Office of Appeals, National Labor Relations Board, Washington, D. C. 20570

Higdon Contracting Co., Inc., 616 Breckenridge Street, Owensboro, Kentucky

Bridge, Structural & Ornamental Iron Workers, Local #103, 5313 Old Boonesville Highway, Evansville, Indiana

SUMMARY REPORT

The charge was filed April 2, 1974. The Charging Party was requested but has failed to proffer a scintilla of substantive evidence in support of this 8(b)(4) charge and takes the position that the evidence in the file in 25-CP-63-1-2 supports the instant charge. This file reflects that the only purpose of the picketing was to require the Employer to honor its contract with Bridge, Structural & Ornamental Iron Workers, Local 103. *Highway Truckdrivers & Helpers, Local 107, Etc.*, 134 NLRB 1320. Inasmuch as the Charging Party has refused to specifically articulate his theories and refused to identify what Company officials would testify to, any additional evidence that would be relevant to the charge, or what relevant evidence was available, it was decided that no further investigation was warranted. Since there is no evidence to support the charge, it is hereby dismissed.

Form NLRB
4-(1)-(68)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R010

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 25-CC-299

Date Filed 04-02-74

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name
Bridge, Structural & Ornamental Iron Workers Local #163

b. Union Representative to Contact

c. Phone No.

d. Address (Street, city, State and ZIP code)
5313 Old Boonesville Highway, Evansville, Ind.

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) ——— (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Picketing various construction sites of Higdon Contracting Co., Inc. to compell Higdon Contracting Co., Inc. to recognize or bargain with the above labor union which has not been certified.

The above union has induced and encouraged individuals employed by other companies, a neutral employer for an object of compelling such neutrals to cease doing business with Higdon Contracting Co., Inc.

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3. Name of Employer
Higdon Contracting Co., Inc.

4. Location of Plant Involved (Street, city, State and ZIP code)
516 Breckenridge St., Owensboro, Ky.

5. Type of Establishment (Factory, mine, wholesaler, etc.)
Construction

6. Identify Principal Product or Service

7. No. of Workers Employed

8. Full Name of Party Filing Charge
Blankenship & Williams, for Higdon Contracting Co., Inc.

9. Address of Party Filing Charge (Street, city, State and ZIP code)
P.O. Box 6713, Indianapolis, Ind. 46227

10. Telephone No.
317-734-7051

11. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By ——— Blankenship & Williams
(Signature of representative or person making charge) (Title or office, if any)

for Higdon Contracting Co., Inc.

Address ——— (Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001).

44

RESPONDENT'S EXHIBIT B-1

ACCEPTANCE OF AGREEMENT

The undersigned contractor having read and been supplied with the Agreement between the Tri-State Iron Workers Employers Association, Inc. and the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 103, hereby accepts and approves said Agreement and becomes one of the Parties thereto.

Said Agreement being in effect from April 1, 1973, covering the jurisdictional area which extends half-way to the nearest outside Local Union of Bridge, Structural and Ornamental Iron Workers.

HIGDON CONST. CO., INC.
Company

/s/ Gerald J. Higdon
By

616 Breckenridge St.
Address

DATE 7-31-73

WITNESS /s/ Bill Moseley

_____
_____
Telephone Number

_____
Name of Insurance Company

_____
Address

_____
_____

Area mailing address if different from Company office:
_____

RESPONDENT'S EXHIBIT C-1

[Received 8:26 A.M., June 20, 1974, NLRB Region 25, Indianapolis, Indiana]

Commencing with the ——— day of ——— 19 ———, the undersigned Employer agrees to make contributions to the Iron Workers St. Louis District Council Pension Trust and/or Welfare Plan in the amount and in conformance with the respective controlling collective bargaining Agreement of said Iron Workers Local Union within whose jurisdiction the work is performed. The Employer agrees to pay the effective rate of contribution(s) for each hour for which the Employee is paid, for all Employees who are members of an Iron Workers Local Union affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers, and such other Employees who are not members of any Local Union of the International Association of Bridge, Structural and Ornamental Iron Workers, who perform similar work, to the IRON WORKERS ST. LOUIS DISTRICT COUNCIL WELFARE PLAN AND/OR, IRON WORKERS ST. LOUIS DISTRICT COUNCIL PENSION TRUST.

The undersigned hereby agrees to become a party and be bound by all the terms and provisions of:

(a) The Agreement and Declaration of Trust, dated July 17, 1953 and all Amendments thereto, of the IRON WORKERS ST. LOUIS DISTRICT COUNCIL WELFARE PLAN, and/or

(b) The Agreement and Declaration of Trust, dated July 30, 1963 and all Amendments thereto, of the IRON WORKERS ST. LOUIS DISTRICT COUNCIL PENSION TRUST.

with the same force and effect as though the undersigned originally signed the said Agreements and Declarations of Trust, and hereby authorize the Employer Trustees

named in those Agreements to act for and on behalf of the undersigned.

Dated:

Higdon Const. Co. Inc.
(Name of Company)

By /s/ Gerald J. Higdon
(Signature of Individual)

_____
Street or P.O. Address

_____
City State

Iron Worker's Local Union No. 103

By /s/ William G. Oglesby
(Authorized Representative)

LOCAL UNION COPY

RESPONDENT'S EXHIBIT D

AGREEMENT

THIS AGREEMENT made this First day of April, 1973, by and between the Tri-State Iron Workers Employers Association, on behalf of its members who employ workmen under the terms and conditions contained herein, and have signed a Letter of Assent to be bound by this Agreement for its duration as set forth below, and Local Union 103, International Association of Bridge, Structural and Ornamental Ironworkers. It shall also apply to other individual employers who employ workmen under the terms of this Agreement and by virtue of signing a similar Letter of Assent, authorize the Tri-State Iron Workers Employers Association, as their collective bargaining agent for all matters contained herein or affecting this Agreement, including all amendments or revisions adopted pursuant thereto. The term "Employer" as used hereinafter shall mean the Tri-State Iron Workers Employers Association. The term "Union" as used hereinafter shall mean Local Union No. 103, IABSOIW.

PREAMBLE: This Agreement is entered into by collective bargaining to prevent strikes and lockouts and to facilitate peaceful adjustment of grievances and disputes between Employer and Union in this trade and to prevent waste, unnecessary and avoidable delays and expense; and so far as possible, to provide for labor's continuous employment, such employment to be in accordance with the conditions herein set forth and at wages herein agreed upon; also, that stable conditions may prevail in the building industry and building costs may be as low as possible, consistent with fair wages and conditions and further, the establishment of the necessary procedures by which these ends may be accomplished.

WITNESSETH THAT: The Employer and Union, in consideration of their mutual promises, agree as follows:

ARTICLE I

Definition of Employee

Whenever the term "Employee" is used herein, the same shall be deemed to mean and refer to a person employed by the Employer and having a job classification of or performing labor as a practical Journeyman Iron Worker or Apprentice.

ARTICLE II

Employer's Liability

It is understood and agreed that the Negotiating Agent, Tri-State Iron Workers Employers Association shall in no event be bound as a principal or Employer hereunder or be held liable as a principal or Employer in any manner for breach of this Agreement by any party hereto: That the liability of the Employers who accept, adopt and sign this Agreement, or a facsimile thereof, hereunder is several and not joint.

This Agreement covers the entire understanding between the parties hereto. No oral or written rule, regulation, or understanding—which is not embodied herein—shall be of any force or effect upon the parties hereto, and it is the intention of the parties hereto to fully preserve the full force and effect of all provisions of the Agreement not contrary to law.

ARTICLE III

Area Limits

The territory covered by this Agreement shall be the territorial jurisdiction of Local Union No. 103, which extends half-way to the nearest outside Local Union of the International Association of Bridge, Structural and Ornamental Iron Workers.

ARTICLE IV

Declaration of Principles

The following underlying principles shall apply to all regulations under this Agreement:

(a) No limitations shall be imposed upon the amount of work an Employee shall perform during his working day.

(b) No restrictions shall be imposed upon the use of machinery, tools, or appliances, except as may be hereinafter provided in the Working Rules.

(c) No restrictions shall be imposed upon the use of any raw or manufactured materials, except that prison-made materials or products shall not be used, unless mutually agreed by parties to this Agreement.

(d) Employees shall be entitled to demand and receive the wages and all other benefits provided for by the terms of the Agreement.

(e) The use of Apprentices shall be recognized and not prohibited.

(f) The Foreman, General Foreman and Area Foreman shall be selected by and recognized as the agent of the Employer.

(g) It is the intent and purpose of this Agreement to prevent slowdowns, forcing of overtime, spread-work tactics, standby crews, and featherbedding practices.

ARTICLE V

Working Rules

1. WORK DAY: Eight (8) hours shall constitute a day's work from 8:00 a.m. to 4:30 p.m. from Monday through Friday, inclusive, except in territories where a shorter work day prevails among a majority of the Building Trades Unions on building work. Noon hour may be curtailed by agreement with the men on the job and the Employer or his Representative. Each Employee covered by this Agreement shall be entitled to a thirty (30) minute lunch period between 12:00 noon and 1:00 p.m.; and

if said lunch period is not provided, the Employee shall receive pay for a thirty (30) minute lunch period in accordance with the overtime provision.

When Employees are required to work more than two (2) hours after the regular quitting time, they shall be allowed one-half (½) hour for supper time at the overtime rate and they shall be allowed one-half (½) hour for lunch at the overtime rate for every four (4) hours worked thereafter.

Starting time may be changed if agreed to between the contractor and the Business Agent or his representative with lunch period being altered proportionately.

2. SHIFT WORK: When two (2) shifts are employed, each shift shall work seven and one-half (7½) hours for eight (8) hours pay at regular time; when three (3) shifts are employed, seven (7) hours shall constitute a day's work for each shift for which a regular wage of eight (8) hours shall be paid, or a proportionate part thereof, for time worked. When multiple shifts are worked on Saturday, Sunday or recognized holidays, the following shall apply: When two (2) shifts are employed, each shift shall work seven and one-half (7½) hours for eight (8) hours pay at double the straight time rate of wages. When three (3) shifts are employed, each shift shall work seven (7) hours for eight (8) hours pay at double the straight time rate of wages, or a proportionate part thereof for time worked. On all shift work performed on Saturday, Sunday or holidays, the overtime rate of double time shall start with the beginning of the first, or "morning" shift. Not more than one (1) shift shall be allowed on a job of less than five (5) days duration except in case of an emergency, which shall be decided by the General Executive Board. No one Employee shall work multiple shifts except in cases of emergency.

3. OVERTIME AND HOLIDAYS: Double time shall be paid for any and all work in excess of eight (8) hours on any regular work day and for all time worked on Saturday, Sunday and recognized holidays. No work shall be performed on Labor Day, except to save life or property. The following holidays shall be observed: New

Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day following Thanksgiving Day and Christmas Day. Any holiday which occurs on a Sunday shall be observed the following Monday.

4. WAGE RATES: Effective April 1, 1973, the following minimum hourly wage rates shall apply as indicated payable in wages or fringes at the Union option:

	Effective 4-1-73	Effective 4-1-74	Effective 4-1-75
Journeyman	$8.80	$ 9.30	$ 9.85
Foreman	9.30	9.80	10.35
General Foreman	9.55	10.05	10.60
Area Foreman	9.80	10.30	10.85

In addition to the above four rates, a cost of living increase may be paid for the years 1974 and 1975.

If the cost of living as published by the Consumer Price Index increases for the year 1973 above a base rate of 4.0%, then the difference in this increase will be multiplied times $9.30 and added to the wage rate beginning April 1, 1974, and the 1973 Consumer Price Index will become the base rate.

If the 1973 Consumer Price Index is less than 4.0%, then 4.0% remains the base there will be no additional increase.

If the cost of living as published by the Consumer Price Index increases for the year 1974 above the base rate, then the difference will be multiplied times $9.30 and added to the wage rate beginning April 1, 1975.

If the 1974 Consumer Price Index is less than the base rate, there will be no additional increase.

5. WELFARE PLAN: All Employers signatory hereto agree to pay forty (40) cents per hour for each hour for which the Employee has worked for all Employees covered by this Agreement to the Iron Workers St. Louis District Council Health and Welfare Plan, 4401 Hampton Avenue, St. Louis, Missouri. The contributions of the Employers shall be used exclusively to provide Group Life Insurance, Accidental Death and Dismemberment Insurance, Hospital Expense Insurance, Surgical Expense

Insurance, Medical Expense Insurance and Temporary Disability Benefits to eligible Employees and their dependents; and to provide funds for organization and administration expenses of said Fund all in accordance with the Agreement and Declaration of Trust as established by the duly elected Employer and Employee representative Trustees.

The said Welfare Fund shall be administered pursuant to an Agreement and Declaration of Trust administered jointly by an equal number of representatives of the Employers and the Union, which Agreement and Declaration of Trust shall conform to all requirements of Law. A copy of said Agreement and Declaration of Trust, together with any amendments thereto, shall be considered as part of this Agreement as though set forth here at length.

Welfare contributions shall be paid monthly up to and including the last payroll date in each and every calendar month on or before the fifteenth (15th) day of the following month and shall be recorded on forms supplied by the Welfare Fund.

6. PENSION FUND: The Employers covered under this Agreement agree to pay fifty (50) cents per hour for each hour for which the Employee is paid for all Employees covered by this Agreement to a Pension Fund. The contribution of the Employer shall be used exclusively to provide old age or disability pensions to Iron Workers in such form and amounts as the Trustees of the Pension Fund may determine, and the organization and administration expenses of the Pension Fund.

The said Pension Fund shall be administered pursuant to an Agreement and Declaration of Trust administered jointly by an equal number of representatives of the Employers and the Union, which Agreement and Declaration of Trust shall conform to all requirements of law. A copy of the said Agreement and Declaration of Trust, together with any amendments thereto shall be considered as part of this Agreement as though set forth here at length.

Pension contributions shall be paid monthly up to and including the last payroll date in each and every calendar month on or before the fifteenth (15th) day of the following month and shall be recorded on forms supplied by the Pension Fund.

7. APPRENTICES: According to the following percentage of Journeyman scale:

1st 6 months	70%
2nd 6 months	75%
3rd 6 months	80%
4th 6 months	85%
5th 6 months	90%
6th 6 months	95%

Two and one-half (2½) cents per hour will be contributed to a jointly administered apprenticeship and training program.

Apprentices shall be used in accordance with the provisions set forth in the Constitution and Apprenticeship Standards.

8. PAY DAY: The regular pay day shall be once a week on such day as agreed upon between the Employer and the Local Union, and wages shall be paid before quitting time, and wages are to be paid in cash or other legal tender.

Employers may withhold three (3) days of wages due, to enable them to prepare the payroll, or as mutually agreed.

When Ironworkers are laid off, or discharged, they shall be paid in full in cash or other legal tender on the job immediately, and if required to go to some other point or to the office of the Employer, each Ironworker shall be paid for the time required to go to such place. When Ironworkers quit of their own accord, they shall wait until the regular pay day for the wages due them.

Any undue delay or loss of time caused Ironworkers through no fault of their own, shall be paid for by the Employer causing such delay at the regular straight time wages.

Accompanying each payment of wages shall be a separate statement identifying the Employer, showing the total earnings, the amount of each deduction, the purpose thereof, and net earnings.

9. REPORTING TIME: When an Employee is ordered by the Employer or his representative to report for work and then through no fault of the Employee, he is not put to work, or is employed for less than two (2) hours, the Employer shall pay him for two (2) hours time, except when Employees are notified the day previous and not later than ten (10) minutes before quitting time, that their services are not needed the following day. On jobs of more than two (2) hours' duration, all Employees shall be paid for actual hours worked.

10. TRANSPORTATION: Adequate transportation shall be provided, when the work is performed more than one-fourth (¼) mile from parking facilities.

11. FOREMAN — GENERAL FOREMAN — AREA FOREMAN — CREW SIZE: When two (2) or more Ironworkers are employed, one (1) shall act as Foreman. When two (2) gangs are employed, one (1) Foreman shall be classified as a General Foreman who will have supervision over the other Foreman and will supervise one (1) gang. When three (3)gangs are employed, there will be a full time General Foreman who will supervise the Foremen of the three (3) gangs. When the fourth gang is employed, an Area Foreman shall be employed who will supervise the General Foreman and Foreman of the fourth gang. When the fifth gang is employed, an additional General Foreman shall be employed who will supervise the fourth, fifth and sixth gangs, and also be under the supervision of the Area Foreman. This same ratio shall be maintained for General Foreman as the number of gangs increase, however, there shall be no limit on the number of General Foremen under an Area Foreman.

No more than seven (7) Journeyman Ironworkers shall be under the supervision of one (1) Ironworker Foreman. When erecting structural steel with power equip-

ment the Ironworker Foreman shall supervise this gang only.

12. IRON WORKERS REQUIRED ON GUY AND STIFF LEG DERRICKS: No less than six (6) men and a foreman shall be employed around any Guy or Stiff Leg Derrick used on steel erection, and on all power-operated rigs of any description, no less than four (4) men and a foreman shall be employed except on special occasions. The crew size may be reduced where it is feasible and agreed upon between the Business Agent and the Contractor performing such work. However, at no time shall an Agreement on one job be construed as to mean the same condition shall exist on other jobs of like manner, due to the varied safety conditions of the workmen performing the work in different locations and under different hazards of the trade.

13. REINFORCING: On all concrete reinforcing work in the Ironworkers jurisdiction, Ironworkers shall be used to load and unload (except by hand), place, fasten or insert for all pours. If, at the time the concrete pour is being made and the services of an Ironworker is not required, it will be unnecessary for the Contractor to employ an Ironworker to watch or stand by the pour. No less than one (1) Ironworker shall be used to straighten, move reinforcing or pulling mesh. Adding reinforcing steel which may have been left out, shall be done by an Ironworker. On all shift work and before and after regular working hours, an Ironworker shall be available when concrete pours are made. If iron work is required on a concrete pour, a call shall be made to the Business Agent regarding this matter.

14. REELS: Employers shall furnish reels and tie wire on all reinforcing jobs requiring same. Reel shall remain property of the Employer.

15. RIVETING GANGS: Riveting gangs shall be composed of not less than four (4) men at all times. The Employer may require heaters to have their fires going ready to furnish hot rivets at the regular starting time,

but in such event, the heaters shall be paid double time for such time worked before the regular starting time.

When three (3) or more riveting gangs are employed on any job, a Foreman shall be employed who shall not be required to work in any riveting gang except where emergencies arise which will require the Foreman to temporarily fill in the gang.

16. SAFETY PROVISIONS: All provisions of safety, as set out by the Occupational Safety and Health Act, shall be observed with special attention to safety practice governing Planking floors, Riding Loads, Slings, Signaling and Elevator Shaft Protection.

An Ironworker Welder or Burner shall have the right to refuse (for reasons of safety) to work off the ground without a Journeyman Ironworker Helper.

When structural steel is erected on water spans over rivers or streams with a water width of one hundred (100) or more feet and depth of more than five (5) feet, the Employer shall employ a Journeyman Ironworker, who is a qualified swimmer, as a safety man and furnish a boat to enable the safety man to patrol the water area beneath the bridge during all working hours when structural Ironworkers are working. The cost to qualify the swimmer will be borne by the Contractor.

17. NELSON STUDS: It is encouraged that all Nelson studs are to be field fabricated if attached to a top flange. The Contractor and Business Agent will resolve the safety problems in connection with other protruding objects.

18. TOOLS: Journeymen Ironworkers employed on ornamental, structural or rod work shall furnish their own tools. The following shall be construed as minimum requirements:

Ornamental

1—12" Hack Saw
1—Plumb Bob & Line
1—Scriber
1—Divider

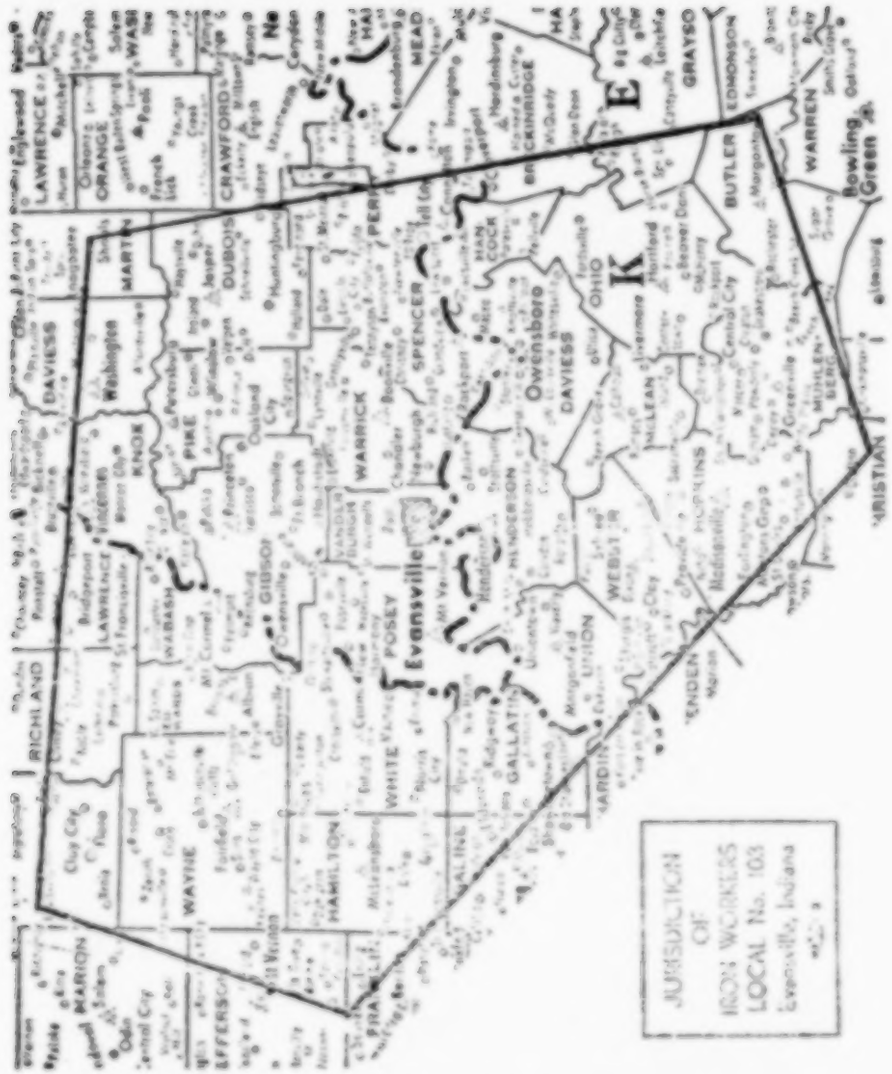
1—Rachet & Socket Wrench Set
2—C-Clamps
1—Center Punch
1—Drift Pin
1—Tap Wrench
1—6" Screw Driver
1—8" Screw Driver
1—12" Screw Driver
1—Offset Screw Driver
1—12" Square
1—50' Tape
1—6' Rule
2—Ball Peen Hammers
1—10" Pliers
1—8" Crescent Wrench
1—10" Crescent Wrench
1—12" Crescent Wrench
1—24" Level
1—Chalk Line Box
1—Set Open End Wrenches
4—Chisels

Structural

1—Belt & Bag
1—Bull Pin
1—6' Rule
1—Ball Peen No. 2 Hammer
1—50' Tape per gang, supplied by the Ironworker Foreman. All other special tools shall be supplied by the Employer.
1—¾" Spud Wrench
1—⅞" Spud Wrench
1—12" Crescent Wrench

Rodman

1—Pair Pliers
1—6' Folding Rule



19. WELDERS: All cost of certifying welders shall be paid by the Employer. A copy of certification must be forwarded to the Local Union office within thirty (30) days after date of test. An Employee shall be required to remain on that job at least fifteen (15) calendar days or until completion of that job, unless discharged. An Employee failing to comply with the above will have the wages that were paid for his taking such test, deducted from his final pay.

When welding is done on any work covered in this Agreement, it shall be done by Ironworkers. When welding on steel skeletons or when scaffolding is used, Journeyman Welders shall be provided with Journeyman Assistants as follows: When two (2) or three (3) Journeyman Welders are used, one (1) Journeyman Assistant shall be employed. When four (4) or five (5) Journeymen Welders are used, two (2) Journeymen Assistants shall be employed. If more welders are employed the same ratio of Journeyman Assistants shall be used.

On all welding jobs requiring protective clothing, such as gloves, sleeves, hood and jackets, they shall be furnished by the Employer.

20. POWER EQUIPMENT: Iron Workers will perform all work pertaining to erecting guy or stiff leg derricks, skip hoist, tower cranes, tramways, cable ways, gin pole, Chicago Boom, A frames, gallows frames, jib crane, overhead cranes, or any other lifting equipment used in performing work claimed by Ironworkers.

21. RIGGING: When machinery or equipment under the jurisdiction of Iron Workers is moved which requires jacks, rollers, chain falls, sling chokers or any type of power equipment, the Employer shall employ Iron Worker riggers to perform such work.

22. WINDOWS: When steel, aluminum, bronze or any metal windows are installed in prepared openings, or attached to structural steel, they shall be erected by Ironworkers.

23. HAND RAILS: When welded pipe hand rails are erected, Iron Workers shall be employed to perform all welding and necessary work to complete the job. Iron Workers shall be required to furnish all necessary hand tools.

Any work installed by the Ironworkers that requires the use of the instrument level or transit, shall be performed by an Ironworker or a professional engineer.

24. TOOL CRIB OR ROOM: When tools and/or supplies are checked out or in, for the Iron Workers Trade,

a Journeyman Ironworker shall be the Tool Room Attendant. The necessity for a Tool Room shall be determined by the Employer.

25. PRECAST: Iron Workers shall perform all reinforcing work pertaining to (prestressing) and precast concrete girders, columns, joist, footing, beams and slabs, including the handling and setting of same. Also, all necessary handling and setting of all tilt up slabs and all precast concrete panels when attached to steel or handled by power equipment. All reinforcing work pertaining to lift slabs, including wrapping, greasing and operation of prestressed jacks and lift jacks. Number of men to be in each crew shall be determined by the Contractor and the Business Agent.

26. SHIPPING—EMPLOYEES: Employees shipped to jobs or work out of the jurisdiction of the Local Union shall receive transportation, traveling time and expenses, providing they remain on the job thirty (30) days. Employees shipped to a job and not put to work, weather permitting, or the job is not ready for them to go to work, shall be paid the regular wage rate for such time, or such employee shall be shipped back to the shipping point with time and transportation paid by the Employer.

27. DRINKING WATER—CLOTHES ROOM: The Employer shall furnish suitable drinking water at all times and each job of sufficient size and length to justify same, shall be provided with a suitable shed or room for the Employees to change their clothes and keep their tools.

28. COMPENSATION INSURANCE: The Employer must, at all times, provide Workmen's Compensation Insurance and Unemployment Insurance, according to the laws governing the several states covered by the geographical jurisdiction of the Union.

29. BUSINESS REPRESENTATIVE: The Business Representative of the Union shall be permitted to visit all jobs, but will in no way interfere with the progress of the work.

30. JOB STEWARD: There shall be a Steward on each job who shall be appointed by the Business Representative or elected by the men on the job. He shall keep a record of the workers laid off and discharged and take up all grievances on the job and try to have the same adjusted and in the event he cannot adjust them, he must promptly report that fact to the Business Representative, who shall report same to the proper office of the Union so that efforts can be made to adjust any matter without a stoppage of work. He shall see that the provisions of this Agreement are complied with and report to the Union the true conditions and facts. The Steward shall promptly take care of injured Ironworkers and accompany them to their homes or to a hospital, as the case may require, without any loss of time and report the injury to the proper officers of the Union. The Employer agrees that the job Steward will be the last man laid off, providing he is capable of performing the work in question. The job Steward shall be notified by the craft Supervisor in time to discuss any changes, if necessary, with the Employer before any Ironworkers are discharged or laid off.

31. PROTECTION OF UNION PRINCIPLES: The removal of Journeymen Iron Workers and Apprentices from a job in order to render legal assistance to other Local Unions to protect Union Principles shall not constitute a violation of this Agreement, provided such removal is first approved by the General Executive Board and notice thereof is first given to the Employer involved.

32. SUB-CONTRACTORS: Where not contrary to the laws of several states covered by area limits, the Employer agrees not to sub-contract or sub-let any work covered by this Agreement to any person, firm or corporation which is not in contractual relationship with the international Association of Bridge, Structural and Ornamental Iron Workers or any of its affiliate Local Unions.

33. SAVINGS CLAUSE: Should any part of or any provisions herein contained be rendered or declared invalid by reason of any existing or subsequently enacted Legislation, or by any decree of a Court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof; provided, however, upon such invalidation the parties signatory hereto agree to immediately meet to renegotiate such parts or provisions affected. The remaining parts or provisions shall remain in full force and effect.

34. LETTERS: Upon request by the Union, Employers who employ Iron Workers in the jurisdiction of Local 103, shall furnish the Union with signed letters on their letterhead, stating they have paid the negotiated wage scale. The text of the letter shall consist of scale of wages, type of work performed, total number of Iron Workers employed on project or any other information requested to be used to establish jurisdictional claims or prevailing wage rates.

ARTICLE VI

Grievance Procedure

If any controversy, dispute or grievance arises with respect to the interpretation, application, or enforcement of any of the provisions of this Agreement, the same (herein referred to as the "issue"), shall be first submitted to the Business Representative of the Union and to an Executive Officer of the Employer for settlement: If the issue is not thus disposed of within twenty-four (24) hours after such submission, the same shall then be immediately referred, in writing, to a Labor Management Committee (hereinafter provided for) for consideration and settlement. The Labor Management Committee shall prescribe all rules of procedure and shall furnish all parties to the issue a reasonable opportunity to be heard thereon.

Any decision rendered by a majority of the members of the Labor Management Committee shall be final and binding on all parties. During the above procedure, there shall be no stoppage of work.

The Labor Management Committee above referred to shall be composed of equal representation by the Employer and Employee and shall consist of not less than three (3) Employer-Representatives and not less than three (3) Employee-Representatives.

In the event an impasse is reached, the Labor Management Committee will mutually agree within twenty-four (24) hours on a neutral party to decide the issue.

ARTICLE VII

Strikes and Lockouts

It is mutually agreed that there shall be no strikes authorized by the Union or no lockouts authorized by the Employer, except for the refusal of either party to submit to arbitration, in accordance with Grievance Procedure, or failure on the part of either party to carry out the award of the Board of Arbitration.

Every facility of each of the parties hereto is hereby pledged to immediately overcome any such situation; provided, however, it shall not be a violation of any provision of this Agreement for any person covered by this Agreement to refuse to cross or work behind the picket line of any affiliated Union which has been authorized by the International of the Union.

ARTICLE VIII

Craft Jurisdiction

It is agreed that the jurisdiction of work covered by this Agreement is that provided for in the Charter Grant issued by the American Federation of Labor to the International Association of Bridge, Structural and Ornamental Iron Workers, it being understood that the claims are subject to Trade Agreements and final decisions rendered by the National Joint Board for Settlement of Jurisdictional Disputes.

The parties to this Agreement are subject to and agree to be bound by all decisions and awards made by the National Joint Board for Settlement of Jurisdictional Disputes with respect to all jurisdictional disputes which maye arise under this Agreement.

ARTICLE IX

Termination

The Agreement with any amendments thereof made as provided for therein, shall remain in full force and effect until midnight of March 31, 1976, and, unless written notice be given by either party to the other at least three (3) months prior to such date of a desire to change therein or to terminate the same, it shall continue in effect for an additional year thereafter. In the same manner, this Agreement, with any amendments thereof, shall remain in effect from year to year thereafter, subject to termination at the expiration of any such contract year upon notice, in writing, given by either party to the other at least three (3) months prior to the expiration of such contract year. Any such notice as hereinabove provided for in this Article, whether specifying a desire to terminate or to change at the end of the current year, shall have the effect of terminating this Agreement at such time.

IN WITNESS WHEREOF: This Agreement has been executed by the parties hereto as of the date and year first written, in the City of Evansville, State of Indiana.

FOR THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 103

Charles W. Hill
Business Agent
Joel W. Morefield
President
James R. Oglesby
Recording Secretary
Otto D. Hill
Edgar Barnett
Louis H. Dersch
Gordon R. Hill
Ronald K. Gower

FOR THE TRI-STATE IRON WORKERS EMPLOYERS ASSOCIATION

Poe Steel Erection, Inc.
David C. Poe, President
Allied Erection & Conveyor, Inc.
Joseph J. Vezzoso, President
Tri-State Steel Erection Inc.
John Robert Moye, President
Industrial Contractors Inc.
Alan W. Braun, Vice-President

Dated: April 11, 1973

AMENDMENT TO AGREEMENT

WHEREAS, on the First day of April, 1973, an Agreement was made by and between the Tri-State Iron Workers Employers Association, hereinafter called "the Association", on behalf of its members who employ workmen under the terms and conditions contained therein, and have signed a Letter of Assent to be bound by said Agreement for its duration as set forth therein, and of other individual employers who employ workmen under the terms of said Agreement and by virtue of signing a similar Letter of Assent, authorize the Association to act as their collective bargaining agent for all matters contained therein or affecting said Agreement, including all amendments or revisions adopted pursuant thereto, each of which member and other individual employers are hereinafter called "the Employer", and Local Union 103, International Association of Bridge, Structural and Ornamental Ironworkers, hereinafter called "the Union"; and

WHEREAS, Article V, Sec. 4 of said Agreement provides that the minimum hourly wage rates fixed therefore shall be payable in wages or fringes at the Union's option; and

WHEREAS, the Union now exercises its option to provide that Twenty-five Cents ($.25) of each hour's wage paid for straight time, and Fifty Cents ($.50) of each

hour's wage paid for overtime shall be payable in fringe benefit as Vacation Pay, which shall be paid as hereinafter set forth,

NOW THEREFORE IT IS AGREED by and between said Association, on behalf of all of said Employers and said Union, that:

1. Each Employer shall, beginning September 1, 1973 and continuously during the duration of said Agreement of April 1, 1973, withhold and deposit in the Warrick National Bank of Boonville in Boonville, Indiana, in a separate account for all Employees covered by said Agreement, the sum of Twenty-five Cents ($.25) per hour for each hour of straight time, and the sum of Fifty Cents ($.50) per hour of overtime, for each hour for which the Employee has received wages.

2. Said deposits shall be made monthly on or before the Fifteenth day of each month by each Employer in said Warrick National Bank of Boonville in individual accounts for each Employee.

3. Each Employer shall furnish to said Bank at the time of making said deposits a statement setting out the name of each Employee, the Social Security number of each Employee, number of hours straight time and number of hours overtime worked for the month covered for each Employee, and the amount to be deposited to said Employee's account in said Bank pursuant to this Vacation Plan.

4. Each Employer shall, at the same time, send two copies to Warrick National Bank of said statement, which is given to the Bank as hereinabove set out; said statement shall also contain the amount which the Employer has contributed to the "jointly administered apprenticeship and training program" as provided for in Article V, Sec. 7 of said Agreement of April 1, 1973.

5. Each Employer shall show on each check stub of each Employee the amount of money withheld as hereinabove set out for the Vacation Plan.

6. If the Business Manager of Local 103 believes it is necesasry, he may request that the monies not be deducted and be applied to the Employees check.

7. Upon request by the Business Manager, the Employer shall furnish to said Business Manager such information and reports as he may request.

DATED at Evansville, Indiana, this 15th day of August 1973.

LOCAL UNION No. 103

By Charles W. Hill

TRI-STATE IRON WORKERS
EMPLOYERS ASSOCIATION

By John Robert Moye

SUPREME COURT OF THE UNITED STATES

No. 76-719

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, ET AL.

ORDER ALLOWING CERTIORARI—
Filed February 22, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 232505 82